

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSHUA SCOTT,

Plaintiff,

v.

HERTZ,

Defendant.

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No. 4:08-CV-1434 CAS

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of pro se plaintiff Joshua Scott for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff purports to bring this action under 18 U.S.C. §§ 2073, 2113 & 2314. Named as defendant is Hertz, the rental car agency. Plaintiff alleges that he rented a car from Hertz and that he purchased insurance with the rental. Plaintiff claims that he got into an accident in the car. Plaintiff says that Hertz sent him a bill for \$1,064.45 to cover the damages to the car. Plaintiff alleges that he tried to work out a payment plan with Hertz but that they have refused to answer his calls. Plaintiff seeks an order from this Court wiping out his debt with his bank and an order directing Hertz to return to plaintiff whatever money it took from him.

Discussion

The complaint is legally frivolous. The federal criminal statutes do not afford citizens a private cause of action. Initiation of a federal criminal prosecution is a discretionary decision within the Executive Branch and is not subject to judicial compulsion. See Ray v. United States Dept. of Justice, 508 F. Supp. 724, 725 (E.D. Mo. 1981); 28 U.S.C. § 547(1). As a result, the Court will dismiss the complaint under 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis is **GRANTED**. [Doc. 2]

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel is **DENIED** as moot. [Doc. 4]

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

A handwritten signature in cursive script, reading "Charles A. Shaw", written in black ink.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of October, 2008.